

Legislative Analysis



BROADBAND EXPANSION ACT OF MICHIGAN

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House Bill 4288 (H-4) as reported from committee

Sponsor: Rep. Michele Hoytenga

1st Committee: Communications and Technology

2nd Committee: Ways and Means

Complete to 9-22-20

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 224 of 2020)

SUMMARY:

House Bill 4288 would create a new act, the Broadband Expansion Act of Michigan, to establish a statewide grant service program to expand broadband service to unserved areas of Michigan. The bill would establish conditions, processes, and procedures that would apply to the grants, the grant recipients, and the Michigan Department of Technology, Management, and Budget (DTMB) in relation to the program.

The bill would require DTMB to establish and implement the statewide Broadband Expansion Act of Michigan Grant Program within 60 days after receiving an appropriation or federal funding to implement the new act. DTMB could use program money only to administer the program and to award grants to *applicants* for projects that exclusively extend *broadband service* into *unserved areas* of the state.

Broadband service would mean a retail service, not including a satellite service, capable of delivering high-speed internet access at speeds of at least 25 megabits per second downstream and three megabits per second upstream.

Unserved area would mean any of the following:

- A census block lacking access to broadband service from at least one *internet service provider*.
- An area lacking access to broadband service from at least one internet service provider according to the most accurate and granular data on the broadband map created by the Federal Communications Commission (FCC).
- An area delineated by DTMB in the application process, as described below.

Internet service provider would mean any of the following:

- A licensee under the Michigan Telecommunications Act.
- A franchisee under the Uniform Video Services Local Franchise Act.
- An entity currently providing broadband service in Michigan.

Applicant would mean an internet service provider that submits an application for a grant after collaborating with the community in the unserved area.

Application information

An applicant for a grant would have to provide the following information in the application:

- The location of the project in the unserved area, described either by the specific street address or by a shapefile as defined in 47 USC 641. (A shapefile is a digital storage

format with geospatial or location-based data and attribute information that can be viewed, edited, and mapped in geographic information system software.)

- Evidence regarding the unserved nature of the community where the project would be located.
- Evidence of community support for the project with a narrative on the impact that the investment will have on community and economic development in the area.
- Significant community institutions that would benefit from the project.
- The number of households that would have access to broadband service as a result of the project or whose internet access would be upgraded to broadband service.
- All sources of funding or in-kind contributions for the project in addition to the grant award.
- The total cost of the project and a detailed budget and schedule.
- The kind and amount of broadband infrastructure to be purchased for the project.
- The internet service provider's experience and financial resources.

An applicant's *trade secrets*, financial information, and proprietary information submitted as part of an application would be exempt from disclosure under the Freedom of Information Act.

Trade secrets would mean information that meets both of the following:

- It derives independent economic value (actual or potential) because it is not generally known to, and not readily and properly ascertainable by, other persons who can obtain economic value from its disclosure or use.
- Efforts are made, reasonably under the circumstances, to maintain its secrecy.

Delineated areas

An applicant could request, as part of an application, that DTMB specifically delineate an area within a census block as an unserved area. For a delineated area to be tentatively established, an applicant would have to attest to all of the following:

- The delineated area is unserved and does not have access to broadband.
- To the best of the applicant's knowledge, no other service provider plans to provide broadband service to the delineated area within three years after the date of the application.
- The delineated area is not within a census block selected to receive funding to support the expansion of broadband networks from the FCC or the US Department of Agriculture (USDA). If DTMB tentatively determined a delineated area to be an unserved area, the recommended grant award for the application would still be subject to an objection by internet service providers.

Grant process

Grant money would have to be issued through a competitive and technologically neutral grant process that would result in awards to applicants proposing projects based on objective and efficient procedures.

Within 30 days after receiving an appropriation or federal funding to implement this new act, DTMB would have to establish and publish on its website its criteria for scoring

applications. Applicants would have to submit their project funding applications within 60 days after publication of those criteria.

Criteria for determining a grant award would have to include the following:

- The applicant's experience and financial resources.
- The readiness to build, operate, and maintain the project.
- The long-term viability of the project.
- The scalability of the network.
- The applicant's ability to leverage broadband for community and economic development.
- The applicant's ability to provide discounted broadband service throughout the unserved area to low-income households.

Priority would have to be given to projects that exhibit collaboration to achieve the community investment and economic development goals of the impacted area and that are able to demonstrate that the applicant has the managerial, financial, and technical ability to build, operate, and manage a broadband network.

Ineligibility for grant

An applicant could not receive a grant for the same project or geographic area for which the applicant had obtained federal, state, or local government funding awarded specifically to support expansion of broadband networks.

DTMB could not directly or indirectly award grant money to a government entity or educational institution or an affiliate to own, purchase, construct, operate, or maintain a communications network or to provide service to any residential or commercial premises.

A person that filed a false statement under the act would be ineligible to receive a grant the next time grants were issued.

DTMB could not award a grant to an applicant if any of the following conditions were met:

- DTMB receives a sworn statement from an officer of an internet service provider that the proposed project includes an area where construction of a network to provide broadband service is underway, and the construction is scheduled to be completed within one year after the date of the application.
- DTMB receives a sworn statement from an officer of an internet service provider that the proposed project includes either of the following:
 - An area where the construction of a network to provide broadband service is to be completed no later than two years after the date of an application.
 - A specific geographical area where an internet service provider has been selected to receive funding (provisionally or otherwise) from the FCC or the USDA specifically for the expansion of broadband service. However, this provision would not apply to an area once either of the following occurred:
 - The internet service provider does not complete the requirements for obtaining the funding described above.
 - The time period for the internet service provider to meet its obligation described above has expired and the area remains unserved.

- Verifiable information shows that the proposed project includes an area where at least one provider has *deployed* broadband service.

Deployed would mean that a provider meets either of the following:

- Currently provides broadband service of at least 25 megabits per second download and three megabits per second upload in the specific geographic area of the applicant's proposed project.
- Is able to provide broadband service of at least 25 megabits per second download and three megabits per second upload in the specific geographic area of the applicant's proposed project within 30 days after a customer requests installation of that service and without an extraordinary commitment of resources or construction charges or fees exceeding an ordinary service activation fee. The 30-day time period would be extended to 60 days if permits were needed before the broadband service was activated.

Scoring and award recommendations

After scoring and considering all grant applications, DTMB would make grant award recommendations. DTMB would have to give priority to applications demonstrating one or more of the following:

- That there is a likelihood the unserved area will not be served without state grant funding.
- That the applicant has the managerial, financial, and technical ability to build, operate, and manage a broadband network.
- That the project will serve a larger unserved area or a greater number of locations within an unserved area than other proposed applications.
- That the applicant can commit to providing at least 50% of the cost to deploy the project set forth in the application.
- That there is collaboration to achieve community investment and economic development goals of an impacted area.

Within 30 days after making recommendations, DTMB would have to publish on its website, for each recommended application, the grant applications (redacted according to the Freedom of Information Act¹), the proposed geographic broadband service area, and the proposed broadband service speeds.

Comments and objections

After publishing the award recommendations and before granting an award, DTMB would have to establish a period of at least 60 days to accept comments or objections concerning any application. All comments or objections would have to be investigated by DTMB as needed when deciding an applicant's eligibility for a grant. If an objection submitted by a provider contained information requiring an investigation and was found to be inaccurate, the provider would have to reimburse DTMB for the cost of verifying the information.

¹ See section 14 of that act: <http://legislature.mi.gov/doc.aspx?mcl-15-244>

Grant awards and conditions

DTMB would have to award the initial grant money within 270 days after the money was made available under the program.

In making a grant, DTMB could not impose an open network architecture requirement, rate regulation, or other term or condition of service that differed from the terms or conditions in the applicant's other service areas.

DTMB could not award more than \$5.0 million to any one project or to any one applicant.

Notice and reports

At the time of a grant award, DTMB would have to immediately provide notice on its website of each applicant receiving a grant, including the name of the entity, the amount of the grant, the broadband speed, and the unserved area.

An applicant awarded a grant would have to submit a semiannual report, in a format specified by DTMB, from the time the applicant received the grant to three years after completion of the project. The reports would have to be made available on DTMB's website with any proprietary information redacted. The report would have to give an accounting by the applicant of the use of the money and the progress toward fulfilling the objectives of the grant, including the number and location of residences and businesses that will have access to the broadband service, the speed of service, the average price of service, and the service adoption rates.

FISCAL IMPACT:

House Bill 4288 would require the state to appropriate state or federal funds to support grants to broadband service providers. The cost to the state would depend on the scope of the program and the amount of state funds approved by the legislature.

2018 PA 618 appropriated \$20.0 million (\$13.6 million General Fund/General Purpose) to DTMB for a state broadband grant program, which was implemented as the Connecting Michigan Communities Grant Program, or CMIC. Section 806 of the act contained language substantially similar to language in the bill and provided guidance for administration of the grant program. There are currently 14 communities recommended to receive a grant from the \$20.0 million appropriation, with final award decisions due in September 2020. The amount necessary to support the extension of broadband services to all eligible rural areas is indeterminate but would greatly exceed \$20.0 million. The bill would not require any minimum appropriation. All administrative costs to DTMB would be supported by the appropriation.

POSITIONS:

The following entities indicated support for the bill:

- Department of Technology, Management, and Budget (9-22-20)
- Telecommunications Association of Michigan (9-22-20)
- Michigan Community College Association (9-9-20)

- Communication Workers of America (9-9-20)
- AT&T Michigan (9-22-20)
- Michigan Cable Telecommunications Association (9-22-20)
- Frontier Communications (9-22-20)

A representative of the Michigan Townships Association testified in opposition to the bill. (9-9-20)

The following entities indicated opposition to the bill:

- Michigan Municipal League (9-22-20)
- Protec (9-9-20)
- Michigan Association of Counties (9-22-20)
- Michigan Association of School Boards (9-22-20)
- School Equity Caucus (9-22-20)
- Oakland Schools (9-22-20)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.